

September 18, 2015

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Pinole Rodeo Auto Wreckers
Attn: James F. Taylor, Owner
700 Parker Avenue
Rodeo, California 94572

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Mr. Taylor:

I am writing on behalf of San Francisco Baykeeper (“Baykeeper”) to give notice that Baykeeper intends to file a civil action against Pinole Rodeo Auto Wreckers (“PRAW”) for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”) at PRAW’s facility, located at 700 Parker Avenue, Rodeo, California (the “Facility”).

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper’s purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper’s members’ use and enjoyment of these waters are negatively affected by the pollution caused by PRAW’s operations.

This letter addresses PRAW’s unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper’s investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Permit”) and by Order No. 2014-0057-DWQ (“2015 Permit”) (collectively, the “Industrial Stormwater Permit”).¹

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file

¹ On April 1, 2014, the State Water Resources Control Board adopted 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).

suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to PRAW of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against PRAW under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that PRAW contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

PRAW’s Facility is located at 700 Parker Avenue in Rodeo, California. At the Facility, PRAW conducts auto dismantling activities. Potential pollutants from the Facility include total suspended solids (“TSS”), oil and grease, heavy metals, antifreeze, fuel, battery acid, and other pollutants. Stormwater from the Facility discharges indirectly to Rodeo Creek, which flows to San Pablo Bay, a northern extension of San Francisco Bay.

B. The Affected Water

San Pablo Bay is a water of the United States. The CWA requires that water bodies such as San Pablo Bay meet water quality objectives that protect specific “beneficial uses.” The beneficial uses of San Pablo Bay and its tributaries include industrial service supply, commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Pablo Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

II. THE FACILITY’S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

In September 1996, PRAW submitted a Notice of Intent (“NOI”) to be authorized to discharge stormwater from the Facility under the 1997 Permit. In March 2015, PRAW submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants² and best conventional pollutant control technology (“BCT”) for conventional pollutants.³ 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.⁴

PRAW’s self-reported exceedances of Benchmark values over the last five (5) years, identified in Attachment 2 to this letter, indicate that PRAW has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies PRAW that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for TSS and oil and grease.

PRAW’s ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that PRAW has not developed and implemented sufficient Best Management Practices (“BMPs”) at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

² BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

⁴ The Benchmark values are part of EPA’s Multi-Sector General Permit (“MSGP”) and can be found at: <http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm>. The most recent sector-specific Benchmarks can be found at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf (“2015 MSGP”). SIC Code 5015 is covered under Sector M in the 2015 MSGP.

PRAW's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day PRAW discharges stormwater without meeting BAT/BCT. Baykeeper alleges that PRAW has discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years.⁵ Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. PRAW is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1-A.10.; 2015 Permit, Section X. Moreover, the Industrial Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to "ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in [the 2015 Permit].").

Based on information available to Baykeeper, PRAW has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, PRAW's past or current SWPPP has not/does not include and/or PRAW has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

⁵ Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.

Moreover, PRAW has failed to submit an updated SWPPP and site map in compliance with the requirements of the 2015 Permit. 2015 Permit, Section I.I. (Finding 54).

Accordingly, PRAW has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of the Industrial Stormwater Permit, and PRAW will continue to be in violation every day until it develops and implements an adequate SWPPP. PRAW is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

C. Failure to Properly Sample Stormwater Discharges

PRAW is also in violation of the Industrial Stormwater Permit because it has been collecting stormwater samples that do not adequately reflect pollution coming from its industrial activities. Section B.7.a. of the 1997 Permit requires PRAW to “collect samples of stormwater discharges from all drainage areas that represent the quality and quantity of the facility’s storm water discharges.” Section B.5.c.ii. of the 1997 Permit requires facilities to sample for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B.5.c.iii. of the 1997 Permit and Section XI.B.6. of the 2015 Permit require facilities to sample for specific analytical parameters based on their SIC code. For automobile salvage yards, these parameters are iron, lead, and aluminum. PRAW has failed to test its samples for these parameters and thus has failed to comply with Sections B.5.c. and B.7.a. of the 1997 Permit or Section XI.B.6. of the 2015 Permit.

Furthermore, the Industrial Stormwater Permit requires a minimum number of sampling events per wet season, with limited exceptions. 1997 Permit, Section B.5.; 2015 Permit, Section XI.B.2. Yet PRAW has failed to sample and analyze at least two stormwater discharges from the Facility during any wet season over the past five years. PRAW reported taking only one sample during the 2010-2011 wet season, and zero samples during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons.

As a result of PRAW’s failure to properly sample stormwater discharges from its Facility, PRAW has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. PRAW will continue to be in violation of the sampling requirements each day that PRAW fails to adequately develop and/or implement an effective sampling program at the Facility. PRA is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

D. Failure to File Annual Reports

The 1997 Permit required dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. 1997 Permit, Section B.14. Likewise, the 2015 Permit requires dischargers to submit an Annual Report by

July 15th following each reporting year via the Storm Water Multiple Application and Report Tracking System ("SMARTS") Database. 2015 Permit, Section XVI.A. The Annual Report must be signed and certified by an appropriate corporate officer, 1997 Permit, Sections B.14., C.9., and C.10., or a discharger's Legally Responsible Person or Duly Authorized Representative, 2015 Permit, Section II.A. The Industrial Stormwater Permit requires the discharger to include in their annual report an evaluation of their stormwater controls, including certifying compliance with the Permit. 1997 Permit, Section A.9.d.; 2015 Permit, Section XVI.B.

PRAW failed to submit to the Regional Board and/or SMARTS annual reports for the 2012-2013, 2013-2014, and 2014-2015 wet seasons. Consequently, PRAW has violated the reporting requirements of the Industrial Stormwater Permit every time PRAW failed to submit a report. PRAW is subject to penalties for violations of Section B of the 1997 Permit, Section XVI of the 2015 Permit, and the CWA since July 2, 2012.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. PRAW sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." 1997 Permit, Order Part A.1.; *see also* 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28).

Because PRAW has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS.

Pinole Rodeo Auto Wreckers is the person responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

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VII. REMEDIES.

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against PRAW for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against PRAW in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,



Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper

Cc:

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Attachment 1: EPA Benchmarks and Water Quality Standards for Discharges to Freshwater

A. EPA Benchmarks, 2000 and 2015 Multi-Sector General Permit (“MSGP”)

Parameter	Units	Benchmark value	Source
pH	SU	6.0 – 9.0	2000 MSGP
Total Suspended Solids	mg/L	100	2000 MSGP
Chemical Oxygen Demand	mg/L	120	2000 MSGP
Oil and Grease	mg/L	15	2000 MSGP
Aluminum Total	mg/L	0.75	2015 MSGP
Iron Total	mg/L	1.0	2015 MSGP
Lead Total	mg/L	0.095	2015 MSGP*

* Assuming a water hardness range of 100-125 mg/L

B. Water Quality Standards (Basin Plan, Table 3-3)

Parameter	Units	WQS value	Source
pH	SU	6.5 – 8.5	Basin Plan
Lead	mg/L	0.065	Basin Plan

Attachment 2: Table of Exceedances for Pinole Rodeo Auto Wreckers

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2010-2011	12/8/2010	Total Suspended Solids	2020	mg/L
2010-2011	12/8/2010	Oil and Grease	150	mg/L

Attachment 3: Alleged Dates of Exceedances by Pinole Rodeo Auto Wreckers September 19, 2010 to September 18, 2015

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; Richmond, CA station, GHCND:USC00047414, when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2010	2011	2012	2013	2014	2015
10/23	1/2	1/20	1/6	1/30	2/6
10/24	1/30	1/21	1/24	2/6	2/7
10/29	2/16	1/23	2/7	2/7	2/8
11/7	2/17	2/7	2/19	2/8	3/23
11/10	2/19	2/13	3/6	2/26	4/5
11/20	2/24	2/15	3/20	2/27	4/7
11/21	2/25	2/29	3/31	2/28	4/25
11/23	3/2	3/1	4/1	3/4	
11/27	3/6	3/13	4/4	3/6	
12/3	3/14	3/14	6/25	3/25	
12/4	3/15	3/15	9/21	3/26	
12/6	3/16	3/16	11/19	3/27	
12/8	3/18	3/17	11/20	3/29	
12/9	3/19	3/24		3/31	
12/14	3/20	3/25		4/1	
12/18	3/23	3/27		4/2	
12/19	3/24	3/28		4/4	
12/21	3/25	3/31		9/25	
12/26	3/26	4/1		10/25	
12/29	4/13	4/11		10/31	
	4/21	4/12		11/13	
	5/16	4/13		11/19	
	5/31	4/26		11/20	
	6/4	10/22		11/22	
	6/28	10/23		11/29	
	6/29	10/24		11/30	
	10/4	11/1		12/2	
	10/5	11/16		12/3	
	10/6	11/17		12/4	
	11/6	11/18		12/6	
	11/12	11/28		12/10	
	11/26	11/30		12/11	
		12/1		12/15	
		12/2		12/16	
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